

ENTERED

August 20, 2018

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CHRISTIAN DEAN COURTNEY, §
§
Plaintiff, §
§
v. § CIVIL ACTION NO. H-17-2876
§
NANCY A. BERRYHILL, §
ACTING COMMISSIONER OF THE §
SOCIAL SECURITY ADMINISTRATION, §
§
Defendant. §

MEMORANDUM OPINION

Pending before the court¹ are Plaintiff's Motion for Summary Judgment (Doc. 18) and Defendant's Cross-Motion for Summary Judgment (Doc. 13). The court has considered the motions, the responses, the administrative record, and the applicable law. For the reasons set forth below, the court **DENIES** Plaintiff's motion and **GRANTS** Defendant's motion.

I. Case Background

Plaintiff filed this action pursuant to 42 U.S.C. § 405(g) for judicial review of an unfavorable decision by the Social Security Administration ("SSA") Commissioner ("Commissioner" or "Defendant") regarding Plaintiff's claim for supplemental security income under Title XVI of the Social Security Act ("the Act").

¹ The parties consented to proceed before the undersigned magistrate judge for all proceedings, including trial and final judgment, pursuant to 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73. Doc. 11, Ord. Dated Dec. 15, 2017.

A. Medical History

Plaintiff was born on April 4, 1996, and was eighteen years old on the date of redetermination of disability under adult standards.² Plaintiff had received supplemental security income as a child.³

Plaintiff sought treatment at the Lone Star Family Health Center beginning in March 2014.⁴ In his first appointment, Plaintiff's grandmother described his attention deficit hyperactive disorder ("ADHD") symptoms as the following: "short attention span, impulsive behavior, hyperactive behavior, easy distractibility, poor listening, careless mistakes, difficulty remaining seated, [and] excessive talking and interrupting others."⁵ Plaintiff had taken Adderall for a long time, which helped to quell his symptoms.⁶ Plaintiff's bipolar symptoms were reported as "distractibility, racing thoughts, periods of excess energy and loss of interest, [and not including] flight of ideas."⁷ Plaintiff was re-prescribed Adderall for ADHD and was instructed to "adopt healthy behaviors" such as exercising, wearing a seatbelt, eating

² See Tr. of the Admin. Proceedings ("Tr.") 12, 18, 31.

³ See Tr. 10.

⁴ See Tr. 388.

⁵ Id.

⁶ See id.

⁷ Id.

healthy, and refraining from smoking.⁸ Plaintiff was referred for a psychiatric evaluation.⁹ On June 25, 2014, Plaintiff reported that he had one poor sleeping episode.¹⁰ Plaintiff was described as "alert, oriented to name" with a "stable mood" and "consistent" affect and, while he had a low level of eye contact due to staring at his cell phone, he had a goal-oriented thought process and "normal" speech.¹¹ Plaintiff reported no hallucinations, paranoia, or suicidal or homicidal ideation.¹² Plaintiff was taking Adderall for ADHD and Depakote and Seroquel for bipolar disorder.¹³

Plaintiff underwent a psychiatric evaluation on March 27, 2014.¹⁴ It was noted that Plaintiff graduated high school in January 2014 and had moved in with his grandmother where he was not "doing much."¹⁵ Plaintiff had been "doing well" with his medications.¹⁶ Plaintiff displayed a cooperative attitude, an appropriate affect, a euthymic mood, spontaneous speech, a focused thought process, no hallucinations, no delusions, no homicidal

⁸ See Tr. 389.

⁹ See id.

¹⁰ See Tr. 382.

¹¹ Id.

¹² See id.

¹³ See id.

¹⁴ See Tr. 371-75.

¹⁵ Tr. 371.

¹⁶ Id.

ideation, and no suicidal ideation, impaired insight, or limited judgment.¹⁷ He was oriented and his concentration was intact.¹⁸ It was noted that Plaintiff had bipolar disorder, Asperger's syndrome, ADHD, and oppositional defiant disorder ("ODD").¹⁹ On April 3, 2014, Plaintiff's global assessment of functioning ("GAF") score was fifty, indicating serious symptoms or any serious impairment.²⁰

Plaintiff returned to the Lone Star Family Health Center on October 9, 2014.²¹ Marwan Al-khudhair, M.D. ("Dr. Al-kudhair") noted that Plaintiff had "no behavioral problems" and "no eating difficulties."²² Plaintiff slept ten hours every night.²³ On November 5, 2014, Plaintiff was treated by Robert Bogan, M.D. ("Dr. Bogan").²⁴ Plaintiff reported that he had "mostly been doing well recently" and that he was not experiencing any unprovoked changes in mood.²⁵ Plaintiff was still taking Adderall and explained that it was helping him focus on Facebook.²⁶ Plaintiff's grandmother

¹⁷ See id.

¹⁸ See id.

¹⁹ See Tr. 376.

²⁰ See Tr. 368.

²¹ See Tr. 442.

²² Id.

²³ See id.

²⁴ See Tr. 441.

²⁵ Id.

²⁶ See id.

explained that when he took the Adderall, he was "easier to deal with" and that it helped his appetite remain "normal."²⁷ Plaintiff was cooperative, displayed an appropriate affect, had normal speech, goal-oriented thoughts, and had no suicidal ideation, homicidal ideation, or psychosis.²⁸

Plaintiff returned on March 4, 2015, for treatment related to his bipolar disorder, reporting difficulty sleeping.²⁹ His grandmother stated that he was able to sleep better once he took his medication.³⁰ Plaintiff's mental status examination was normal.³¹ On July 8, 2015, Plaintiff reported that his mood was "good" and that he was counseling people online about their mental issues.³² It was noted that Adderall was helping Plaintiff focus and that it suppressed his appetite.³³ However, Plaintiff had trouble sleeping, as he would sometimes stay up for three days at a time and then sleep for two straight days.³⁴ Another mental status examination was conducted which was relatively normal, but

²⁷ Id.

²⁸ See id.

²⁹ See Tr. 518.

³⁰ See id.

³¹ See id.

³² See Tr. 513.

³³ See id.

³⁴ See id.

noted that his speech was slow.³⁵

Plaintiff underwent counseling on August 26, 2015.³⁶ He had normal psychomotor and activity levels, and easily established rapport; the counselor described him as "friendly" and "adequately groomed."³⁷ Plaintiff's eye contact was appropriate, his speech was normal, his thoughts were logical and undirected, and his mood was positive with a wide range of emotion.³⁸ Plaintiff's grandmother expressed her concern over his sleeping habits.³⁹ Plaintiff stated that he did not want to work because he did not want to interact with people; he also reported that he talked with his friends on Skype, played video games, and looked at the internet.⁴⁰ Plaintiff reported that he had begun an online relationship with an eighteen-year-old woman in South Dakota who would come live with him in two years after she completed college.⁴¹

Plaintiff attended another therapy session in December 2015.⁴² He was described by the counselor in a similar manner to his August 2015 appointment and his thoughts were deemed rational and goal-

³⁵ See id.

³⁶ See Tr. 505.

³⁷ Id.

³⁸ See id.

³⁹ See id.

⁴⁰ See id.

⁴¹ See id.

⁴² See Tr. 493.

oriented.⁴³ The counselor noted that Plaintiff did not give a specific reason for missing his previous appointments, as the last counseling appointment he attended was in August 2015.⁴⁴ Counseling notes reflect that, because Plaintiff stayed up late watching television, he often overslept.⁴⁵ It was recorded that Plaintiff expressed a lack of interest in receiving therapy, explaining that he would rather stay at home.⁴⁶ Plaintiff stated he had no interest in working, and his grandmother concurred that he should not work.⁴⁷

In October 2015, Plaintiff reported that he was doing well and had no complaints.⁴⁸ Plaintiff was counseled to lose weight through better nutrition and exercise.⁴⁹ On January 14, 2016, Plaintiff requested a refill of Adderall due to a recent weight gain.⁵⁰ Plaintiff reported daily episodes related to his bipolar disorder, symptoms of which included distractibility, hyperactivity, agitation, and poor concentration, and Dr. Al-khudhair noted that his symptoms were moderately severe but improving with medication.⁵¹

⁴³ See id.

⁴⁴ See id.

⁴⁵ See id.

⁴⁶ See id.

⁴⁷ See id.

⁴⁸ See Tr. 496.

⁴⁹ See Tr. 497.

⁵⁰ See Tr. 489.

⁵¹ See id.

Plaintiff also attended a psychotherapy appointment on that same date.⁵² There, Plaintiff displayed "fidgety" motor activity and was dressed casually with adequate hygiene.⁵³ Plaintiff had normal speech and appropriate eye contact with no homicidal or suicidal ideation or psychosis.⁵⁴ His mood was "anxious" with a "wide range of emotion" and an "appropriately shifting affect."⁵⁵ Plaintiff's thoughts were not goal-oriented but were described as rational.⁵⁶ Plaintiff reported that he sometimes felt like "punching somebody" due to frustration and stated that he was bored at home and would not ride his bike anymore because there was no one to hang out with.⁵⁷ Plaintiff reported that he had carried a knife for protection since he was ten years old.⁵⁸

On March 30, 2016, Plaintiff returned for a clinic appointment.⁵⁹ Plaintiff's bipolar symptoms of distractibility, hyperactivity, agitation and poor concentration were noted as moderately severe but improving with medication.⁶⁰ The symptoms

⁵² See Tr. 492.

⁵³ See id.

⁵⁴ See id.

⁵⁵ Id.

⁵⁶ See id.

⁵⁷ See id.

⁵⁸ See id.

⁵⁹ See Tr. 487.

⁶⁰ See id.

occurred three times a week rather than daily and were worsened when provoked by emotional or family-related stress.⁶¹ It was noted that Plaintiff had not sought follow-up psychiatric treatment as instructed by his doctors.⁶²

B. Disability Redetermination

Plaintiff applied for supplemental security income benefits on March 1, 2005, alleging an onset date of February 1, 2004.⁶³ In a disability report dated May 13, 2014, Plaintiff reported the following medical conditions: Asperger's syndrome, bipolar disorder, ADHD, ODD, learning disabilities and high blood pressure.⁶⁴ Plaintiff explained that he had never worked.⁶⁵ In an updated disability report from July 29, 2015, it was reported that Plaintiff "seem[ed] more depressed."⁶⁶

In support of Plaintiff's application, several people, including his grandmother, wrote letters contending that Plaintiff was disabled.⁶⁷ Marilyn Abbott, a neighbor and retired teacher, opined that Plaintiff was "severely disabled," noting his mood

⁶¹ See id.

⁶² See id.

⁶³ See Tr. 192-206.

⁶⁴ See Tr. 210.

⁶⁵ See id.

⁶⁶ Tr. 246.

⁶⁷ See Tr. 266-73.

swings and difficulty concentrating.⁶⁸ Another neighbor, Kalen Bogart, wrote that Plaintiff had "high" intellectual functioning that was impaired by his lack of concentration, problematic temperament, and difficulty regulating his mood.⁶⁹

On September 3, 2014, a psychiatric review technique assessment was performed by Mischca Scales, Ph.D., ("Dr. Scales").⁷⁰ Dr. Scales noted Plaintiff's ADHD and bipolar disorder diagnoses and stated that Plaintiff displayed symptoms of hyperactivity.⁷¹ In terms of Plaintiff's degree of limitation, Dr. Scales concluded that Plaintiff did not meet the paragraph B criteria, finding that he had: (1) mild restriction in activities of daily living; (2) moderate difficulties in maintaining social functioning; (3) moderate difficulties in maintaining concentration, persistence, or pace; and (4) no episodes of decompensation.⁷² Plaintiff also was found not to meet the paragraph C criteria.⁷³

A mental residual functional capacity ("RFC") assessment was also completed by Dr. Scales on that same date.⁷⁴ Plaintiff was found to be not significantly limited in the following areas: the

⁶⁸ See Tr. 271.

⁶⁹ See Tr. 273.

⁷⁰ See Tr. 415-27.

⁷¹ See Tr. 416-18.

⁷² See Tr. 425.

⁷³ See Tr. 426.

⁷⁴ See Tr. 429-31.

ability to remember locations and work-like procedures; the ability to understand and remember very short and simple instructions; the ability to carry out very short and simple instructions; the ability to maintain attention and concentration for extended periods; the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; the ability to sustain an ordinary routine without special supervision; the ability to make simple work-related decisions; the ability to ask simple questions or request assistance; the ability to accept instructions and respond appropriately to criticism from supervisors; the ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes; the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness; the ability to be aware of normal hazards and take appropriate precautions; the ability to travel in unfamiliar places or use public transportation; and the ability to set realistic goals or make plans independently of others.⁷⁵

Plaintiff was found to be moderately limited in the following areas: the ability to work in coordination with or proximity to others without being distracted by them; the ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a constant pace

⁷⁵ See Tr. 429-30.

without an unreasonable number and length of rest periods; the ability to interact appropriately with the general public; and the ability to respond appropriately to changes in the work setting.⁷⁶ Plaintiff was found to be markedly limited in his ability to understand, remember, and carry out detailed instructions.⁷⁷ Dr. Scales concluded that Plaintiff could "understand, remember and carry out only simple instructions, make decisions, attend and concentrate for extended periods, interact adequately with others, and respond appropriately to changes in routine work settings" and that Plaintiff's allegations were "not wholly supported" by the record.⁷⁸

On September 9, 2014, the SSA found Plaintiff was not disabled upon re-evaluation using the adult standard for disability.⁷⁹ On May 20, 2015, the SSA again found Plaintiff not disabled upon reconsideration.⁸⁰ Plaintiff requested a hearing before an administrative law judge ("ALJ") of the Social Security Administration.⁸¹ The ALJ granted Plaintiff's request⁸² and

⁷⁶ See Tr. 429-30.

⁷⁷ See id.

⁷⁸ Tr. 431.

⁷⁹ See Tr. 93-95, 435.

⁸⁰ See Tr. 107-20, 436.

⁸¹ See Tr. 121-26.

⁸² Plaintiff's original hearing was set for March 9, 2016. However, Plaintiff had not obtained representation at that time and requested to postpone that hearing until he could find representation. The ALJ granted his request and

conducted a hearing on July 29, 2016.⁸³

C. Hearing

At the hearing, Plaintiff, his grandmother Mary Sanchez ("Sanchez"), and a vocational expert, Cheryl Swisher ("Swisher" or "VE") testified.⁸⁴ Plaintiff was represented by an attorney.⁸⁵

Plaintiff testified that he was unmarried and lived with his grandmother.⁸⁶ Plaintiff was able to read and write English and perform basic mathematic skills.⁸⁷ In terms of education and training, Plaintiff earned a high school diploma but did not have any vocational training.⁸⁸ Citing his mood swings, sleep patterns, asthma, and other issues, Plaintiff explained that he had never looked for a job.⁸⁹

While attending Huntsville High School, Plaintiff was enrolled in a special education program where he received extra educational assistance.⁹⁰ During his tenure at that school, there was an incident where Plaintiff became angered by the teacher helping him,

reset the hearing for July 29, 2016. See Tr. 79-88.

⁸³ See Tr. 26-77.

⁸⁴ See id.

⁸⁵ See Tr. 28.

⁸⁶ See Tr. 31-32.

⁸⁷ See Tr. 32.

⁸⁸ See id.

⁸⁹ See Tr. 32-33.

⁹⁰ See Tr. 33-34.

and he left school without permission.⁹¹

Plaintiff was arrested twice as a juvenile.⁹² Plaintiff explained that in one instance, he was "framed" by a girl who cut her shirt with scissors and blamed him.⁹³ The other incident occurred on September 29, 2010, when he was aggressive towards a Child Protective Services ("CPS") case worker, prompting, in part, his admission to a psychiatric hospital that same date.⁹⁴ Plaintiff said that he did not touch the case worker, but he did become angry with her because "[s]he was making [his] grandmother cry."⁹⁵

Plaintiff was hospitalized three times for psychiatric problems, with the latest occurrence in 2010, at age fourteen.⁹⁶ Plaintiff frequently missed school days in 2010, and, as a result, CPS removed him from his grandmother's home and placed him in psychiatric care at IntraCare Hospital.⁹⁷ Once he was discharged from IntraCare Hospital, he was involuntarily taken by CPS to Bayes Achievement Center ("Bayes Center"), a residential treatment and educational center for children with special needs and behavioral

⁹¹ Tr. 34.

⁹² See Tr. 39-40.

⁹³ See id.

⁹⁴ See Tr. 40.

⁹⁵ Id.

⁹⁶ See Tr. 34-35.

⁹⁷ See Tr. 35-38.

problems.⁹⁸ Plaintiff explained that there was housing for the students and that, in addition to attending classes, students were required to clean their dorm area and take care of animals.⁹⁹

Plaintiff's attorney explained that Plaintiff's records from the Bayes Center showed that he "enjoyed interacting with peers" but needed "to be monitored closely when talking to peers for appropriateness."¹⁰⁰ Plaintiff explained that he would "cuss" frequently, and if he became angry with another student, he would sometimes strike them.¹⁰¹ While Plaintiff was enrolled at the Bayes Center, he was on "pretty good" behavior and was rewarded, as a result, with community outings.¹⁰² On the outings, there would usually be one to two staff members per four students.¹⁰³ Plaintiff was also allowed weekend visits with his grandmother.¹⁰⁴ Plaintiff refused to return to the school after these visits and he physically resisted getting into the school van.¹⁰⁵ As a result, the Bayes Center had to bring four staff members to pick him up

⁹⁸ See Tr. 36-37.

⁹⁹ See Tr. 37-38.

¹⁰⁰ Tr. 39.

¹⁰¹ Id.

¹⁰² Tr. 40-41.

¹⁰³ See Tr. 41.

¹⁰⁴ See Tr. 41-42.

¹⁰⁵ See id.

after a home visit.¹⁰⁶ Plaintiff explained that he did not like attending the Bayes Center because his freedoms were limited, however, he acknowledged that he could not return to Huntsville High School because of the incident where he ran from the school.¹⁰⁷

As of the date of the hearing, Plaintiff stated that he had been living with his grandmother, Sanchez, for around a year and a half, following his release from the Bayes Center.¹⁰⁸ Plaintiff explained that his mother died years earlier after suddenly collapsing and hitting her head on the counter.¹⁰⁹ Plaintiff's attorney stated that some reports said that his mother's death was a suicide, reports which Plaintiff denied.¹¹⁰ His mother's death prompted an in-patient admission to IntraCare Hospital.¹¹¹ Plaintiff stated that he was depressed at the time and had suicidal thoughts.¹¹² Plaintiff also became angry when other people talked to him about how his mother died.¹¹³

Sanchez accompanied Plaintiff to his medical appointments, and Plaintiff testified that he received treatment at "quite a few

¹⁰⁶ See Tr. 42.

¹⁰⁷ See Tr. 43.

¹⁰⁸ See Tr. 43-44.

¹⁰⁹ See Tr. 46.

¹¹⁰ See id.

¹¹¹ See id.

¹¹² See Tr. 47.

¹¹³ See id.

places.”¹¹⁴ Plaintiff acknowledged that he did not always pay attention to what doctors told him, citing his short attention span, and he would often let his grandmother talk to the doctor instead.¹¹⁵ Plaintiff’s grandmother also shopped for his clothing.¹¹⁶ Upon questioning by his attorney, Plaintiff stated that he did not always get along with his grandmother and sometimes he would become very angry at her because she nagged him about doing chores.¹¹⁷ They fought on a daily basis.¹¹⁸ Plaintiff’s room did not have a lock on the door because the last time he was taken to Bayes Center, he locked himself in his room and barricaded the door.¹¹⁹

Plaintiff acknowledged that Sanchez had to remind him to bathe; otherwise, he would only bathe twice per week, citing the fact that he rarely would leave the house to socialize.¹²⁰ In interactions with new people, Plaintiff explained that he was “shy.”¹²¹ Plaintiff had one friend “outside of Facebook” who would

¹¹⁴ Tr. 44.

¹¹⁵ See Tr. 55.

¹¹⁶ See Tr. 46.

¹¹⁷ See Tr. 51.

¹¹⁸ See Tr. 52.

¹¹⁹ See Tr. 53.

¹²⁰ See Tr. 44-45.

¹²¹ Tr. 39.

come to Sanchez's apartment around three times per month.¹²² However, Plaintiff recounted an incident where Sanchez called the police on this friend, and the friend was no longer allowed to visit.¹²³ Plaintiff occasionally helped his grandmother with cleaning, carrying groceries, and watering plants.¹²⁴

Citing a lack of motivation, Plaintiff testified that he had "not cleaned his room in ages."¹²⁵ Plaintiff sometimes watched television and was normally able to understand the plot line.¹²⁶ Plaintiff also swam, but experienced back pain and soreness the next day.¹²⁷ Following his doctor's advice to exercise, Plaintiff rode his bicycle around his neighborhood.¹²⁸ Plaintiff sometimes experienced blurriness in his left eye and was prescribed glasses, but, as he wanted contact lenses, he did not wear his glasses often.¹²⁹

Due to high blood pressure, Plaintiff took heart-related medication.¹³⁰ When he experienced high blood pressure, he was not

¹²² Tr. 45.

¹²³ See Tr. 51.

¹²⁴ See Tr. 47-48.

¹²⁵ See Tr. 48.

¹²⁶ See id.

¹²⁷ See Tr. 48-49.

¹²⁸ See Tr. 45.

¹²⁹ See Tr. 45-46.

¹³⁰ See Tr. 49.

be able to get out of bed due to pounding headaches.¹³¹ However, the medication addressed these headaches with no side effects.¹³² Plaintiff also took medications for his psychiatric issues, but explained that he did not always wake up early enough to take them.¹³³ While these medications did help with his mental issues “[a] bit,” Plaintiff still had no motivation and interest in activities.¹³⁴

In crowds of people, Plaintiff stated that he felt “[c]onstricted, claustrophobic,” and uncomfortable.¹³⁵ When Plaintiff went to McDonald’s, he sat in a booth in the back of the restaurant because he was worried that the restaurant might be robbed.¹³⁶ Plaintiff said he usually would go to a drive-through.¹³⁷

Plaintiff was excused from the hearing, and Sanchez began her testimony.¹³⁸ Sanchez explained that she had custody of Plaintiff since he was seven years old.¹³⁹ Sanchez said that Plaintiff always had mental problems and, as a result, had a difficult time at

¹³¹ See id.

¹³² See Tr. 49-50.

¹³³ See Tr. 50.

¹³⁴ See Tr. 50-51.

¹³⁵ Tr. 54.

¹³⁶ See id.

¹³⁷ See Tr. 55.

¹³⁸ See Tr. 55-56.

¹³⁹ See Tr. 57.

school.¹⁴⁰ Sanchez visited his school approximately once a week due to Plaintiff's behavioral issues.¹⁴¹ Plaintiff often bit other students for making fun of him for his mental issues.¹⁴² Plaintiff received his high school diploma from Huntsville High School although his course work was completed at the Bayes Center.¹⁴³

Sanchez explained that she had requested that Plaintiff be removed from the courtroom because she did not want him to become angry during her testimony.¹⁴⁴ Plaintiff's grandmother said that he had a "temper" and had threatened to hit her on one occasion years earlier.¹⁴⁵ She also testified that when the state agency worker came to their residence to check on them, Plaintiff assured the case worker that he would not hurt Sanchez.¹⁴⁶

According to Sanchez, Plaintiff did not have anyone visit him at their apartment.¹⁴⁷ Plaintiff refused to clean his room, so she would clean it for him.¹⁴⁸ Plaintiff read books on occasion.¹⁴⁹

¹⁴⁰ See Tr. 57-58.

¹⁴¹ See Tr. 58.

¹⁴² See id.

¹⁴³ See Tr. 59.

¹⁴⁴ See id.

¹⁴⁵ See id.

¹⁴⁶ See id.

¹⁴⁷ See Tr. 60.

¹⁴⁸ See id.

¹⁴⁹ See Tr. 64.

Sanchez had to insist that he bathe himself, which he would only do one to three times per month.¹⁵⁰ Without her insistence, Sanchez thought that he would never take a bath.¹⁵¹ Plaintiff would take the trash out if she asked, but he only liked to do it after dark so he would not be seen by anyone.¹⁵² Plaintiff did not cook for himself, but knew how to cook eggs.¹⁵³ Sanchez believed that Plaintiff could not live on his own because he would spend his money and not remember to pay his bills.¹⁵⁴ Plaintiff often performed three to four tasks at one time.¹⁵⁵

At one point in time, Plaintiff tried to work for Sanchez's brother.¹⁵⁶ Plaintiff was only able to work for four hours before burning himself on the machine with which he was working.¹⁵⁷ Sanchez also explained that Plaintiff would have difficulty working outside because he would get "overheated."¹⁵⁸ Sanchez believed that Plaintiff had difficulty remembering to complete tasks and spelling

¹⁵⁰ See Tr. 60.

¹⁵¹ See id.

¹⁵² See Tr. 61.

¹⁵³ See Tr. 60.

¹⁵⁴ See Tr. 61, 64.

¹⁵⁵ See id.

¹⁵⁶ See Tr. 61-62.

¹⁵⁷ See Tr. 62.

¹⁵⁸ Id.

easy words correctly.¹⁵⁹

Sanchez drove Plaintiff to his doctor's appointments.¹⁶⁰ She did not want Plaintiff to get a driver's license because he got lost easily.¹⁶¹ She explained that sometimes Plaintiff got lost when he was biking, but he learned when he was lost to go to a certain area and from there to go home.¹⁶²

Sanchez reported that Plaintiff did not handle stress well.¹⁶³ Sanchez opined that Plaintiff would never get married.¹⁶⁴ She stated that he had a girlfriend who lived in Kentucky that he met online but had never spent time with her in-person.¹⁶⁵

At the conclusion of Sanchez's testimony, the VE discussed the capability of an individual with Plaintiff's RFC to perform jobs in the national or regional economy.¹⁶⁶

The ALJ presented the following hypothetical individual:

I want you to assume a person of [Plaintiff's] age, education and work experience, who is limited to being able to understand, remember and carry out simple, well, let me say this, one or two-step tasks, could not operate at a production rate or pace work. The individual would

¹⁵⁹ See id.

¹⁶⁰ See Tr. 63.

¹⁶¹ See id.

¹⁶² See id.

¹⁶³ See Tr. 63-64.

¹⁶⁴ See Tr. 64.

¹⁶⁵ See Tr. 65.

¹⁶⁶ See Tr. 67-77.

be limited to simple, work-related decisions and could work in an environment which has few, if any workplace changes. Furthermore, the individual would be limited to occasional interaction with the public, and occasional interaction with co-workers. Based off of that hypothetical, is there work that such a person could do?¹⁶⁷

The VE opined that Plaintiff could perform work as a yard worker, laundry worker, or office cleaner.¹⁶⁸ The ALJ then added limitations to the hypothetical individual:

All right, for the second hypothetical, the individual would be limited to the same limitations as stated in the first hypothetical, however, I want you to make the following change. Instead of occasional interaction with the public, the individual would be limited to no interaction with the public. And the remaining limitations would remain the same. Are there jobs that exist that such a person could do?¹⁶⁹

The VE opined that a person with such limitations could perform the yard worker, laundry worker, or office cleaner positions.¹⁷⁰

For the third hypothetical individual, the ALJ added: "And for the third hypothetical, if an individual is off-task more than 20 percent of the workday in addition to the limitations that were previously given, is there other work that could be done?"¹⁷¹ The VE responded that there would be no such jobs for this hypothetical

¹⁶⁷ Tr. 69.

¹⁶⁸ See Tr. 69-70.

¹⁶⁹ Tr. 70-71.

¹⁷⁰ See Tr. 71.

¹⁷¹ Id.

individual.¹⁷²

Plaintiff's attorney presented a series of follow-up questions for the VE.¹⁷³ To all of Plaintiff's attorney's hypothetical limitations, the VE opined that there would be no jobs in the national or regional economy that such an individual could perform on a full-time basis.¹⁷⁴ The limitations posed by the attorney were as follows: (1) "the hypothetical individual would need to be prompted by his employer or supervisor two times every hour to complete a task, would there be any jobs in the national economy such an individual could perform" on a full time basis; (2) "the hypothetical individual has a marked limitation in his ability to maintain reliability, further indicating [that Plaintiff] would be tardy once or twice a week, would be absent from work two to three times per month, would there be any jobs in the national economy such an individual could perform;" (3) "the hypothetical individual should have no contact with the public, supervisors or co-workers because of social inappropriateness . . . would there be any jobs in the national economy" on a full-time basis; (4) "the hypothetical individual has a marked limitation in his ability to accept instructions and response to criticism;" (5) "the hypothetical individual wouldn't bathe for two to three months . .

¹⁷² See id.

¹⁷³ See Tr. 71-75.

¹⁷⁴ See id.

. and would be unclean;" (6) "the hypothetical individual would have thoughts of intentionally attempting to harm a co-worker or a supervisor or the public, and would exercise such a thought if he felt that they were being unfair to him in any type of manner . . . assume that a person had that type of thought and would have threatening gestures to follow-up on that . . . this would occur once a week;" (7) "the hypothetical individual requires a highly structured work environment;" (8) "the hypothetical individual would need positive reinforcement every hour and verbal redirection every hour."¹⁷⁵

After Plaintiff attempted to interrupt the ALJ's questioning of the VE, the ALJ directed the questioning back to Plaintiff, asking about his issues with heavy work and authority figures.¹⁷⁶ Plaintiff explained that his back hurt when he lifted heavy objects or swam; the ALJ inquired whether there were no medical records regarding Plaintiff's physical condition, to which Plaintiff's attorney responded that he was not aware of any.¹⁷⁷ As to his statement that he despised authority figures, Plaintiff stated that "because every time I end up with an authority figure, I end up getting restrained or something or they end up just being high and mighty, and I just can't stand that attitude set, and it pisses me

¹⁷⁵ Id.

¹⁷⁶ See Tr. 75-77.

¹⁷⁷ See Tr. 75-77.

off such much that I want to punch them.”¹⁷⁸

D. Commissioner's Decision

On September 12, 2016, the ALJ issued an unfavorable decision.¹⁷⁹ Because Plaintiff turned eighteen on April 3, 2014, his disability application had to be re-evaluated under the standard for adults.¹⁸⁰ Plaintiff was eligible for supplemental security income benefits as a child through the month prior to the month he turned eighteen.¹⁸¹ The ALJ recognized the following impairments as severe: “Asperger’s syndrome; bipolar disorder; Attention-Deficit Hyperactivity Disorder (ADHD); and oppositional defiant disorder” but noted that Plaintiff’s obesity, hypertension, and asthma were not severe impairments as there was no objective medical evidence demonstrating that these conditions caused him limitations.¹⁸²

Plaintiff’s severe impairments, individually or collectively, did not meet or medically equal disorders described in the listings of the regulations¹⁸³ (the “Listings”), according to the ALJ.¹⁸⁴ In

¹⁷⁸ Tr. 76.

¹⁷⁹ See Tr. 7-19.

¹⁸⁰ See Tr. 12.

¹⁸¹ See id.

¹⁸² Id.

¹⁸³ 20 C.F.R. Pt. 404, Subpt. P., App. 1.

¹⁸⁴ See Tr. 13.

particular, the ALJ considered Listings 12.02 (neurocognitive disorders), 12.04 (depressive, bipolar, and related disorders), and 12.10 (autism spectrum disorder).¹⁸⁵ Because Plaintiff only had mild restriction in daily activities, moderate restriction in social functioning, moderate difficulties with concentration, and no episodes of decompensation after attaining the age of eighteen, the ALJ determined that Plaintiff did not meet the paragraph B criteria.¹⁸⁶ The ALJ also found that Plaintiff did not meet the paragraph C criteria.¹⁸⁷

In determining Plaintiff's RFC to perform work-related activities, the ALJ discussed Plaintiff's claimed symptoms and his medical treatment and stated that she followed the regulatory requirements as to both.¹⁸⁸ When considering Plaintiff's symptoms, the ALJ first evaluated whether a medically determinable impairment could reasonably be expected to produce the alleged symptoms.¹⁸⁹ Second, the ALJ determined the "intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit[ed] the claimant's functioning," looking to other evidence in the record for those symptoms that are not

¹⁸⁵ See id.

¹⁸⁶ See Tr. 13-14.

¹⁸⁷ See Tr. 14.

¹⁸⁸ See Tr. 14-18.

¹⁸⁹ See Tr. 14-15.

substantiated by objective medical evidence.¹⁹⁰

The ALJ discussed Plaintiff's medical treatment, including records from his appointments with Lone Star Family Health Center and Tri County MHMR.¹⁹¹ The ALJ explained that the medical evidence contained no opinion from a treating physician finding that Plaintiff was disabled.¹⁹² The mental assessments of the state agency medical consultants were given significant weight, with the ALJ finding them to be wholly consistent with the record.¹⁹³

The ALJ engaged in a thorough recounting of Plaintiff's and his grandmother's testimony regarding the symptoms he experienced as a result of his impairments.¹⁹⁴ Specifically, the ALJ discussed the symptoms associated with his mental impairments and the impact that they had on his life.¹⁹⁵ The ALJ found that Plaintiff's testimony was "not entirely consistent with the medical evidence and other evidence in the record."¹⁹⁶ Therefore, the ALJ only gave Plaintiff's and his grandmother's testimony partial weight.¹⁹⁷ The ALJ concluded:

¹⁹⁰ Tr. 15.

¹⁹¹ See Tr. 16-18.

¹⁹² See Tr. 17.

¹⁹³ See Tr. 17-18.

¹⁹⁴ See Tr. 15.

¹⁹⁵ See id.

¹⁹⁶ Tr. 16.

¹⁹⁷ See id.

After careful consideration of the evidence, the undersigned finds the claimant's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, the claimant's statements concerning the intensity, persistence, and limited effects of these symptoms are not entirely consistent with the medical evidence and other evidence in the record for the reasons explained in this decision.¹⁹⁸

The ALJ found Plaintiff capable of performing a full range of work at any level of exertion.¹⁹⁹ The following nonexertional limitations were included in Plaintiff's RFC: (1) "understanding, remembering, and carrying out instructions involving 1-2 step tasks with no production rate or pace work;" (2) "can make only simple, work-related decisions in an environment with few, if any, workplace changes;" and (3) "can occasionally interact with coworkers and the public."²⁰⁰

Plaintiff had no past relevant work or transferable skills because he had never held a job.²⁰¹ Plaintiff was considered a younger individual with a high school education and the ability to communicate in English.²⁰² The ALJ relied on the VE's testimony that Plaintiff could perform work in the national or regional economy such as a yard worker, laundry worker, or office cleaner.²⁰³

¹⁹⁸ Id.

¹⁹⁹ See Tr. 14.

²⁰⁰ Id.

²⁰¹ See Tr. 18.

²⁰² See id.

²⁰³ See Tr. 19.

Therefore, the ALJ concluded that Plaintiff could make a successful adjustment to work and was therefore not under a disability as of September 30, 2014.²⁰⁴

Plaintiff appealed the ALJ's decision, and, on July 17, 2017, the Appeals Council denied Plaintiff's request for review, thereby transforming the ALJ's decision into the final decision of the Commissioner.²⁰⁵

II. Standard of Review and Applicable Law

The court's review of a final decision by the Commissioner denying disability benefits is limited to the determination of whether: (1) the ALJ applied proper legal standards in evaluating the record; and (2) substantial evidence in the record supports the decision. Waters v. Barnhart, 276 F.3d 716, 718 (5th Cir. 2002).

A. Legal Standard

In order to obtain disability benefits, a claimant bears the ultimate burden of proving he is disabled within the meaning of the Act. Wren v. Sullivan, 925 F.2d 123, 125 (5th Cir. 1991). Under the applicable legal standard, a claimant is disabled if she is unable "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment. . . which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(a); see also

²⁰⁴ See id.

²⁰⁵ See Tr. 1-6.

Greenspan v. Shalala, 38 F.3d 232, 236 (5th Cir. 1994). The existence of such a disabling impairment must be demonstrated by "medically acceptable clinical and laboratory diagnostic" findings. 42 U.S.C. § 423(d) (3), (d) (5) (A); Jones v. Heckler, 702 F.2d 616, 620 (5th Cir. 1983).

To determine whether a claimant is capable of performing any "substantial gainful activity," the regulations provide that disability claims should be evaluated according to the following sequential five-step process:

(1) a claimant who is working, engaging in a substantial gainful activity, will not be found to be disabled no matter what the medical findings are; (2) a claimant will not be found to be disabled unless he has a "severe impairment;" (3) a claimant whose impairment meets or is equivalent to [a Listing] will be considered disabled without the need to consider vocational factors; (4) a claimant who is capable of performing work that he has done in the past must be found "not disabled;" and (5) if the claimant is unable to perform his previous work as a result of his impairment, then factors such as his age, education, past work experience, and [RFC] must be considered to determine whether he can do other work.

Bowling v. Shalala, 36 F.3d 431, 435 (5th Cir. 1994); see also 20 C.F.R. § 404.1520. The analysis stops at any point in the process upon a finding that the claimant is disabled or not disabled. Greenspan, 38 F.3d at 236.

B. Substantial Evidence

The widely accepted definition of "substantial evidence" is "that quantum of relevant evidence that a reasonable mind might accept as adequate to support a conclusion." Carey v. Apfel, 230

F.3d 131, 135 (5th Cir. 2000). It is "something more than a scintilla but less than a preponderance." Id. The Commissioner has the responsibility of deciding any conflict in the evidence. Id. If the findings of fact contained in the Commissioner's decision are supported by substantial record evidence, they are conclusive, and this court must affirm. 42 U.S.C. § 405(g).

Only if no credible evidentiary choices of medical findings exist to support the Commissioner's decision should the court overturn it. See Johnson v. Bowen, 864 F.2d 340, 343-44 (5th Cir. 1988). In applying this standard, the court is to review the entire record, but the court may not reweigh the evidence, decide the issues *de novo*, or substitute the court's judgment for the Commissioner's judgment. Brown v. Apfel, 192 F.3d 492, 496 (5th Cir. 1999). In other words, the court is to defer to the decision of the Commissioner as much as is possible without making its review meaningless. Id.

III. Analysis

Plaintiff requests judicial review of the ALJ's decision to deny disability benefits. Plaintiff asserts that the ALJ erred by finding that Plaintiff's mental impairments did not meet the Listings. Defendant argues that the ALJ's decision is legally sound and is supported by substantial evidence.

Plaintiff contends that he meets the Listing, often citing medical records from the time period before he turned eighteen.

However, these records are not relevant to the determination of whether Plaintiff was disabled after he turned eighteen and could not properly be relied upon by the ALJ to determine if he met the adult listings. These records supported a finding of disability before Plaintiff turned eighteen but the SSA had to redetermine if he was disabled once he became an adult.

The relevant medical evidence does not support a finding that Plaintiff meets any mental health Listing. For example, in his appointment from June 2014 at the Lone Star Family Health Center, he had only one non-sleeping episode and his behavior was normal other than decreased eye contact due to looking at his cell phone. In October 2014, his grandmother reported that he had no behavioral problems or eating issues and he was sleeping ten hours a night. His mental status examinations from that year were normal, he was cooperative, and had an appropriate affect. He had normal speech and no suicidal or homicidal ideation. Plaintiff was repeatedly told to seek psychiatric counseling and failed to comply, often cancelling or failing to attend scheduled appointments without good cause. While Plaintiff testified that he did not get along well with others, he spent time on the internet where he interacted with others, including asking a girl he met to live with him. Plaintiff showed no interest in attempting to work. Plaintiff engaged in daily activities including exercise, helping his grandmother by carrying groceries and watering plants, talking with friends on

Facebook and Skype, and socializing with a friend who visited his apartment.

Additionally, the ALJ's determination is supported by the findings of the state agency consulting physicians, who found that Plaintiff only had moderate or mild limitations as to the paragraph B criteria. These opinions were consistent with the medical evidence in the record and provide substantial evidence in support of the ALJ's finding that Plaintiff did not meet any Listing.

Therefore, the ALJ's decision finding that Plaintiff did not meet any Listing was supported by substantial evidence and Plaintiff's motion should be denied.

IV. Conclusion

Based on the foregoing, the court **DENIES** Plaintiff's Motion for Summary Judgment (Doc. 18) and **GRANTS** Defendant's Cross-Motion for Summary Judgment (Doc. 13).

SIGNED in Houston, Texas, this 20th day of August, 2018.



A handwritten signature in black ink, appearing to read "J. J." followed by a stylized surname, is written over a horizontal line. Below this line, the text "U.S. MAGISTRATE JUDGE" is printed in a standard font.